

# In The Senate of the United States

Sitting as a Court of Impeachment

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IN RE: IMPEACHMENT OF G. THOMAS PORTEOUS, JR.,  
UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

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## MOTION OF THE HOUSE OF REPRESENTATIVES FOR RECIPROCAL DISCOVERY

The House of Representatives (“House”), through its Managers and counsel, respectfully moves the Senate Impeachment Trial Committee to direct Judge Porteous to provide reciprocal discovery to the House. In support of this request, the House respectfully submits:

The House has taken upon itself the ongoing obligation to provide the following materials to Judge Porteous: “1) any tangible evidence the House Managers intend to use at trial; 2) any sworn or adopted statement of a witness to be called at trial; 3) transcripts or substantially verbatim statements of witnesses who will testify at trial; and 4) any exculpatory evidence.”<sup>1</sup> To facilitate the trial preparation process, the House has in fact provided materials above and beyond the above-listed categories. As examples, it has made available large collections of financial records relating to both Judge Porteous and other witnesses, from which only a few pages were identified as potential trial exhibits, as

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<sup>1</sup>See Letter from Alan I. Baron, Esq. to Richard Westling, Esq., March 23, 2010 (providing initial discovery) (attached to this pleading as “Attachment 1”); Letter from Alan I. Baron, Esq. to Richard Westling, Esq., May 11, 2010 (setting forth discovery principles) (“Attachment 2”).

well as testimony of numerous individuals who are unlikely to be called as witnesses at trial.

Moreover, the House, by way of the Report accompanying the Articles of Impeachment, has provided Judge Porteous with a detailed description of the essential features of the witness testimony that will be elicited in its case.<sup>2</sup> Indeed, Judge Porteous is personally knowledgeable of the testimony of many of the witnesses who are likely to be called at trial by virtue of their appearances before the Fifth Circuit Committee and/or at the Hearings before the House Impeachment Task Force. The Report also identifies specific documents that are likely to be used by the House to support the various Articles of Impeachment. Finally, the House, in its reply to a request by Senate Legal Counsel, has set forth its initial witness list.<sup>3</sup>

The House, by way of a letter to counsel for Judge Porteous, has requested “reciprocal” discovery that tracks the first three categories of materials that the House has already provided to Judge Porteous. Specifically, in a May 13, 2010 letter, the House requested that Judge Porteous provide: “1) any tangible evidence Judge Porteous intends to use at trial; 2) any sworn or adopted statements from witnesses whom Judge Porteous intends to call at trial; and 3) transcripts or substantially verbatim statements of witnesses whom Judge Porteous intends to call at trial.”<sup>4</sup> Judge Porteous has not responded to this

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<sup>2</sup>See H.R. REP. NO. 111-427, *Impeachment of G. Thomas Porteous, Jr., Judge of the United States District Court for the Eastern District of Louisiana, Report of the Committee on the Judiciary to Accompany H. Res. 1031*, 111th Cong. 2d Sess (2010).

<sup>3</sup>See Letter from Reps. Adam Schiff and Bob Goodlatte to Sens. Claire McCaskill and Orrin Hatch, Apr. 13, 2010 (“Attachment 3”).

<sup>4</sup>See Letter from Alan I. Baron, Esq. to Richard Westling, Esq., May 13, 2010 (regarding discovery) (“Attachment 4”).

letter (nor did he provide a witness list in his response to the initial inquiries of the Senate Legal Counsel).

We urge that the Senate Impeachment Trial Committee direct Judge Porteous to provide the requested materials to the House. Such disclosures will not only enhance the truth-seeking process so that the Senate may appropriately consider the evidence, but it will ensure that the trial proceeds without unnecessary delay or interruption. Such a direction would be consistent with the Senate's disposition of the House's request for reciprocal discovery in the Hastings impeachment proceeding.<sup>5</sup>

WHEREFORE, the House requests that the Senate Impeachment Trial Committee order Judge Porteous to provide to the House: 1) any tangible evidence Judge Porteous intends to use at trial; 2) any sworn or adopted statements from witnesses whom Judge Porteous intends to call at trial; and 3) transcripts or substantially verbatim statements of witnesses whom Judge Porteous intends to call at trial.

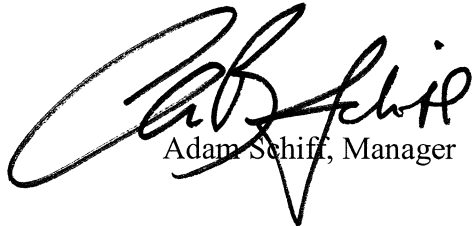
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<sup>5</sup>See Disposition of Pretrial Issues, Senate Impeachment Trial Committee (Judge Hastings), Apr. 14, 1989 at 9, reprinted in Report of the Senate Impeachment Trial Committee on the Articles against Judge Alcee Hastings, S. Hrg. 101-194, Pt. 1, 101st Cong., 1st Sess. at 289 (1989) ("Attachment 5"), where the Senate Impeachment Trial Committee ruled: "Judge Hastings should provide his reciprocal discovery to the House by May 10, including all documents, tapes, and other tangible evidence he intends to offer in evidence, and sworn, adopted, approved, or substantially verbatim statements, of witnesses that Judge Hastings intends to call."

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

By



Adam Schiff, Manager



Bob Goodlatte, Manager



Alan I. Baron  
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

May 28, 2010